



C1-EU-NPA
CLUSTER ONE EU NEGOTIATIONS PLATFORM – ALBANIA



KOMITETI SHQIPTAR I HELSINKIT

POSITION PAPER

“Analysis in the context of obligations deriving from Albania's EU integration process, on the threat of golden passports for security, organized crime, and corruption”.







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Abbreviations

ADSCP	Agency for Drafting Special Citizenship Programs
EU	European Union
CoE	Council of Europe
EC	European Commission
CoM	Council of Ministers
AHC	Albanian Helsinki Committee
ECJ	European Court of Justice
ICJ	International Court of Justice
EP	European Parliament
RA	Republic of Albania
SHISH	State Intelligence Service
TFEU	Treaty for the Functioning of the European Union
EEZ	European Economic Zone

Introduction

Citizenship for investors or the “golden passport” is a practice of granting citizenship on the basis of financial investment and provides a faster path toward acquiring citizenship compared to the traditional practice, circumventing the standards of the Council of Europe Convention on Nationality, which are based on a real connection between the individual and the country granting citizenship.

The scheme for granting golden passports has received harsh criticism from the European Commission and Parliament, starting from 2014, due to the harmful potential for favoring money laundering, corruption, fiscal evasion, and other forms of financial crime; it also represents a threat to the security of the country in question as well as the EU.

European institutions have escalated their position on the issue and with the Resolution of March 2022, the European Parliament envisaged the gradual removal of golden passport programs until 2025 by all member countries that apply such schemes for granting citizenship.

In the Republic of Albania, the scheme for obtaining citizenship has been supported by formulations of provisions envisaged both in the old law as well as the new law on citizenship no. 113/2020. In spite of differences in their formulation, as well as the way in which such cases are categorized (the form of naturalization in the old law and special cases in the new law), our country grants citizenship to individuals if there is “economic interest.”

By means of this position paper, pursuant to its mission of strengthening the rule of law, in accordance with the Constitution and international acts, AHC initially aims at providing an analytical overview of EU legislation and the main positions of EU institutions vis-à-vis the concept of citizenship and, in particular, citizenship for investors. It also analyzes why these institutions moved toward a position that citizenship, from an issue of internal jurisdiction of every country, when granted to an investor or individuals who do not have real connections with the member country, represents a dangerous scheme for security, favoring corruption, organized crime, fiscal evasion, terrorism financing and financial crimes, in EU member countries.

This document also analyzes legislation in force on citizenship, seen not only vis-à-vis the problems and concerns that the EU has found on such schemes in member states and Albania itself as a candidate country for EU membership. At the same time, our legislation has been analyzed in terms of its compatibility with the Constitution, with regard to the principle of legal certainty and constitutional requirements that by-laws issued on the basis of and pursuant to a law have to meet. The provisions in the new law on citizenship are unclear and give excessive discretion to the Council of Ministers, to issue by-laws that envisage the preliminary procedures and institutions responsible for the review and verification of applications for acquiring such form of citizenship.

The EU High Representative for Foreign Affairs and Security Policy, in the joint press conference on March 16, 2013, with the Prime Minister of the Republic of Albania and the EU Commissioner for Enlargement and Neighborhood Relations, declared that the initiative to grant Albanian citizenship to foreign investors in exchange for a payment or predetermined project, known as the

“golden passport initiative” would not be pursued further. On the other hand, the Prime Minister of Albania stated that this issue has been suspended (i.e. has not been fully withdrawn) as the Albanian Government awaits clarification from the European Court of Justice on the issue, which has been borrowed from EU countries that have implemented it successfully.¹

The decision that the Albanian Government awaits from the ECJ appears to have to do with the request that the EC sent in September 2022 on EU member state Malta. Earlier, the Maltese Government declared that it would gradually withdraw the investor citizenship scheme (golden passport), but in fact continued to defend the program as a legitimate tool for promoting investment to the country’s economy. Pursuant to the investigation procedure initiated by the EC, Malta reacted by suspending the issuance of golden passports for Russian and Belarussian citizens (following Russia’s military aggression on Ukraine), but continued to apply the scheme for citizens of other nationalities. The EC considered that granting EU citizenship in exchange for a payment or predetermined investment, without a real connection with the country in question, is not in accordance with the principle of sincere cooperation envisaged in article 4/3 of the TEU and article 20 of the TFEU. This matter is pending at the ECJ.²

Executive Summary

Referring to the concept of European citizenship, envisaged for the first time in the Maastricht Treaty (currently the European Union Treaty), every citizen of a member state is therefore a citizen of the European Union. According to this Treaty, it is up to the member state to grant, lose, regain citizenship of an individual and all matters related to his/her possession of citizenship. By obtaining the citizenship of one of the countries of the EU, the person automatically obtains European citizenship, which enables him/her to enjoy equal rights and treatment before European law.

In spite of the discretion that member states have in their domestic legal regulations regarding the ways to obtain and lose citizenship, due to the connection of this concept with European citizenship, the ECJ has played an important role in guiding member states, which have been reminded that they need to keep consideration the values, principles, and community law of the EU. The ECJ has seen the concept of losing and gaining citizenship linked with the principle of proportionality and the rights and freedoms envisaged in the Social Charter of Human Rights.

The year 2014 marked an important turn in positions of EU institutions with regard to issues of internal legal regulation on citizenship of member states but also of candidate countries aspiring membership. Concretely, in a 2014 resolution, the European Parliament calls on member states to recognize and fulfill the responsibility they have to guarantee EU values and objectives in issues having to do with granting or “selling” citizenship or residence visas for investors. This resolution asks the EC, as the guardian of the treaty, to speak out clearly whether these schemes respect the provisions and spirit of the Treaties and the Schengen Borders Code, as well as EU regulations for non-discrimination.

About five years after that resolution, the EC came out with a report on “Investor citizenship and residence schemes in the EU,” according to which, an increase has been noticed in recent years in citizenship schemes for investors (“golden passport”) and residence schemes for investors (“golden visa”), which seek to attract investment by granting investors citizenship or residence rights of the country in question. Such schemes have raised concerns about some real risks, especially related to

¹ <https://www.dw.com/sq/shqip%C3%ABri-pasaportat-e-arta-borell-dhe-rama-q%C3%ABndrime-ndryste/a-65018908>

² https://ec.europa.eu/commission/presscorner/detail/en/ip_22_5422

security, money laundering, fiscal evasion, and corruption. According to the EC, among the principles that these schemes are believed to violate are the principle of justice and discrimination, the principle of sincere cooperation between countries, the principle of the creation of real or true connection of an applicant with the state, whose citizenship he/she seeks to acquire.

In March 2022, the EP approved – upon proposal of the Commission – Resolution 2022/C 347/08, about gaining citizenship and residence through investment,³ which reiterates the concern that the existence of citizenship schemes for the investors affects all Member States because a decision of a member state to give citizenship to an investor automatically generates rights regarding other member states, especially the right to free movement, the right to vote and run for office in local and European elections, the right to consular protection outside the EU, rights to access in the internal market to exercise economic activity. Acquiring citizenship only because of investment violates the principle of the real connection that should exist between the state and the individual seeking its citizenship, which has no information about the country's culture or language, with economic investment being the only connection. This element is in contravention of the values the EU seeks to convey as it has constantly stressed that European values are not for sale.⁴ The EP seeks the application of a broad alert system across the EU, which contains measurable, rigorously enforceable indicators only for existing programs of these schemes, thus not allowing the legitimization of new programs of this system. This system seeks to measure the maximal number of investor citizenships issued each year, making it zero by 2025, which would mark the year of full removal of these schemes. Such a gradual removal would enable member states that have such schemes to find alternative tools to attract investments and support their public finances. In particular, the EP highlights especially the risks deriving from these schemes applicable in countries that are candidates for membership (Serbia, Albania, Turkey, Montenegro, and North Macedonia), proposing to the Commission to exercise pressure in order to interrupt investor citizenship schemes and the regulation of residence schemes for investors to be included in the membership criteria.

On 29.07.2020, the Assembly of the Republic of Albania approved the new law no. 113/2020, “On citizenship” which invalidated the previous law on Albanian citizenship of 1998 (amended). In principle, the concept of golden passports was supported by both the regulation of the old law and the new law in force. The old law envisaged as ways to obtain citizenship by naturalization, the admission as an Albanian citizen of foreigners who have turned 18 years old, if this fact does not infringe upon the security and protection of the Republic of Albania, and when the country has a scientific, economic, cultural, and national interest. The new law envisages that special instances for obtaining citizenship include those for foreign citizens who have turned 18 (eighteen) years old, when the person does not pose a threat to public order and national security of the Republic of Albania, when there is a national interest or an interest in the field of education, science, art, culture, **economy**, and sports.

The concept of citizenship of the investor or golden passports is admitted in the new law of 2020, by the Parliamentary Committee on National Security, which argues that one of its objectives is the development of the economy and the reduction of unemployment, by granting Albanian citizenship, to foreigners for strategic investments, which will indirectly influence the development of the economy and reduction of unemployment. The initiators of the draft law and the parliamentary bodies underscore that this law does not aim at alignment with the *acquis* of the European Union. Thus, although Albania had started earlier the process for opening accession negotiations, which

³ [European Parliament resolution of 9 March 2022 with proposals to the Commission on citizenship and residence by investment schemes \(2021/2026\(INL\)\) \(europa.eu\)](#)

⁴ Statement by the President of the European Commission Ursula Von Der Leyen <https://www.euractiv.com/section/justice-home-affairs/neës/von-der-leyen-the-european-values-are-not-for-sale/>

was concretized by the decision of March 2020 by the European Council, for such a draft law, it was not deemed necessary to take under review undesirable practices for EU passports expressed since 2014 by the European Parliament and analyzed further in the European Commission Report of 2019, when it underscores with concern suspicious citizenship schemes in Malta, Cyprus, and Bulgaria. It is worth emphasizing that in July 2022, the Inter-Governmental Conference on accession negotiations with Albania was held, while the EC began the screening process, otherwise known as the analytical process of the *acquis* or of European Union legislation, a process divided into 35 chapters, grouped in 6 groups of chapters or clusters.⁵ In September 2022, the process for the first group of six chapters began, 5 of which are affected by the investor citizenship scheme, namely public procurement, statistics, Justice, Freedom, and Security, as well as Financial Control.

From a comparative standpoint vis-à-vis the old law, the new law on citizenship expands the cases when citizenship may be acquired by a foreign citizen who does not meet the other legal criteria, including other cases than scientific, economic, cultural, education, arts, and sports. The restriction or legal reservation in the old law on this category of citizens is narrower as it refers to the non-violation of the security and protection of the RA, while the new law uses concepts such as non-violation of public order (which is broader) and national security.

The authorization for regulation by by-laws of this way of obtaining citizenship was lacking in the old law, which according to the drafters of the new law, has led to not following an established and unified procedure for all cases of granting citizenship in this form, by responsible institutions. However, AHC notes that the authorization of the new law on citizenship to issue this by-law appears to not respect the constitutional requirements envisaged in paragraph 2 of article 118 of the Constitution. Among the constitutional criteria that the formulation of a law should follow for authorizing the issuance of by-laws is to determine not only the competent body and the issues to be regulated (as envisaged by the new law on citizenship), but also to regulate the basic principles on the basis of which these by-laws are to be issued.

For other ways of obtaining citizenship, law no. 113/2020 envisages clearly and exhaustively the criteria and basic principles for the application procedure; exclusively for the other ways of obtaining citizenship, these criteria and procedural aspects are delegated to the Council of Ministers to regulate through by-laws. There is differentiation also regarding the procedure to acquire citizenship, when unlike the citizenship for the investor, for all other ways of obtaining citizenship according to articles 5, 6, 7 and 8 of the law, the provisions envisage the institutions where the initial request is submitted, the deadline for their review, sending back the request if documentation is not complete, and further legal ways until the submission of the proposal of the responsible Minister to the President or the rejection of the request when the criteria are not met (as well as appeal guarantees). In this context, the phrase that the Constitution uses to regulate citizenship “by law” (according to articles 19/1 and 92/1 of the Constitution) as well as the criteria envisaged in article 118/2 of the Constitution, require that the law envisage the criteria and basic principles for obtaining this special way for citizenship. The discretion granted to the Council of Ministers to issue by-laws that regulate the criteria for ways to obtain citizenship (including citizenship for the investor), the application procedures and the way of organization and functioning of the Special State Agency (subordinate to the Minister), contain elements that interfere with the exclusive competence of the Assembly and do not respect the requirements of article 118/2 of the Constitution.

Pursuant to the provisions of the new law on citizenship, which open the way to granting citizenship not only in its classical forms (including citizenship for investors), three CMDs have been approved. The first CMD, on the organization and functioning of the ADSCP (Agency for Drafting Special

⁵ https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/albania_en

Citizenship Programs), tasks this institution with a series of competences, which are not clear, have policymaking competences overlap with control and decision-making competences, and surpass the competences according to the authorization granted by law no. 113/2020, article 9, paragraph 2. Also, the ADSCP is given broad discretion in assessing technical criteria for granting citizenship in special cases and for determining the specific regulations of special controls, thus creating premises for their application in selective ways.

With considerable delay, about one year and a half since the entry into force of the new law on citizenship, 2 CMDs have been approved that establish the criteria, application procedures, rules for conducting necessary controls and verifications for obtaining Albanian citizenship, namely for special contribution in the fields of arts and culture, and contribution in sports, education, and science. Both by-laws lack the criteria or measuring and evaluating indicators as to what will be considered special contribution in these areas; general and evasive formulations are used, such as notable influence in the place of origin and the RA. Also, there are no indicators or concrete cases as to when we'll have to do with a violation of security and public order, granting a broad room for evaluation and discretion to the State Intelligence Service, which creates the premises for a non-uniform application of this criterion.

No CMD has been approved yet about special contributions in the field of economy, which gives an advantage to potential requests by citizens making economic investments of different forms in our country. It is notable that a CMD has been approved in July last year, "On establishing an additional sector that is given by concession/public-private partnership," which envisages the implementation of procedures for concession/public-private partnership, in the sector of citizenship programs, tasking the Ministry of Interior with its implementation. There is no official document that sheds light on the need to draft this CMD and what direction is planned for granting this service by concession or public private partnership.

In February 2018, media discussed that two Indian citizens were granted Albanian citizenship by the President of the Republic, although they were wanted by India for economic crimes.⁶ It is worth emphasizing that in Albania, there is no official data or information as to how many citizens benefited from citizenship for investors according to the previous law on citizenship and the new legislation. There is no data on the official website of the Ministry of Interior, on proposals sent to the President of the Republic on granting citizenship and on what legal provision they rely upon (i.e., whether there are proposals linked with economic interests). On the website of the President of the Republic, the constitutional institution that enjoys the attributes on granting citizenship or relinquishing Albanian citizenship, there is no decree published since 2020 for granting citizenship (the year when the new law on citizenship entered into force in October). This panorama highlights a contradiction to data published by the media, according to which sources at the presidency highlight that the number of granted citizenships in 2021 have increased, almost double compared to the previous year (2020).

The lack of transparency here goes against EU's drawing attention of some member states that appear to be reflecting positively to withdraw from such schemes.

The EC has criticized Albania for including this way of granting citizenship since 2019, when the draft law on citizenship was still at the proposal phase. After the approval of the CMD that opens the way to giving citizenship by concession or public/private partnership, the EC asked Albanian authorities to invalidate the legal basis for the golden passport scheme, a position that consistently follows recommendations reflected in annual reports for Albania in 2020, 2021 and 2022. In its 2022 report, the European Commission recommends that Albania should avoid the scheme of citizenship

⁶ [Analiza e BIRN/Pasaporta shqiptare i "shitet" të huajve të pasur, BE kundër nismës: Skema të tilla paraqesin rreziqe, ja si justifikohet qeveria shqiptare – Balkanweb.com – News24](#)

for investors (golden passports) as it poses a risk related to security, money laundering, fiscal evasion, terrorism financing, corruption and infiltration of organized crime, and is incompatible with EU legislation (acquis). In December last year, the EU Council warned candidate countries for EU accession (including Albania and 4 other countries of the Western Balkans) that it will suspend the visa-free regime if it is deemed that granting citizenship by this scheme would pose a growing risk to internal security and public policy of Member States. This position of the Council is based on the precedent of one month ago on the suspension of the implementation of the agreement of the EU with the Republic of Vanuatu (country in the Pacific, east of Australia), on the removal of short-term visas.

In December 2022, the EU Council warned candidate countries for EU membership (including Albania and 4 other Western Balkan countries) that it would suspend the visa-free regime if it was found that issuing citizenship according to this scheme poses a growing risk for internal security and public policy of member states. This position of the Council is based on the precedent of a month earlier, for the suspension of the implementation of the agreement of the EU with the Republic of Vanuatu,⁷ for the removal of short-term visas. Albanian citizens, as of December 15, 2010, may travel freely to EU countries because Albania is part of the Schengen area. Acquiring an Albanian passport does not lead to impact only in the Republic of Albania, but also in the states where Albanian citizens may travel freely. According to Henley Global, with an Albanian passport (ranked 49th), one may travel visa-free to 116 countries in the world.⁸

Meanwhile, in Albania, the process appears to be at a crossroads because of the pressure and requests of the EU to withdraw from this scheme of granting citizenship, but nevertheless, Albanian authorities have not taken any steps back, to invalidate legal provisions that realize the issuance of citizenship for investors in forms that infringe upon EU principles and values.

⁷ Shtet në oqeanin Paqësor, në lindje të Australisë.

⁸ <https://www.henleyglobal.com/passport-index>

1. The concept of European citizenship according to EU standards and legislation

The way to obtain and lose citizenship of a member country that presupposes the automatic gain or loss of EU citizenship is regulated through the domestic legislation of each member state. EU citizenship establishes the rights, obligations, and privileges that a European citizen enjoys. Citizenship plays an important role both in promoting the rights and freedoms of EU citizens and in ensuring that they are treated in an equal and fair manner in all member states. Below is an analysis of how this right is established in the EU legal framework (*acquis*).

1.1 Regulation according to EU treaties

A European citizen is a citizen of an EU member country who enjoys the rights envisaged in European legislation in the same manner in all 27 countries of the union.

The concept of European citizenship was envisaged for the first time in 1992, in the Maastricht Treaty (now the EU Treaty), which envisages that every citizen of a member state is therefore an EU citizen.⁹ The complementing annexes of the treaty envisage that the granting, loss, regaining of citizenship of an individual and all related issues regarding possession of his/her citizenship are up to the member state.¹⁰ Therefore, the EU and its institutions have no responsibility for granting citizenship, which is regulated in the domestic legislation of the member states. European citizenship gained in this manner is a complementary right and does not replace the citizenship of the respective state.¹¹ A citizen's obtaining of citizenship of an EU member country is not a separate right, but a right linked directly with European citizenship.

European citizenship unites different people under a common identity, enabling them to be on an equal footing and receive equal treatment before European law, independently from whose member country's citizenship they possess.¹²

Article 8(2) of the Amsterdam Treaty attaches to the European citizenship status a series of rights and obligations established by the Treaty, including the right to not be discriminated, because of citizenship, within the scope of work of the *ratione materiae* of the Treaty.¹³ Although the granting, losing, regaining citizenship of an individual is at the discretion of the states, it is important to underscore that member states, when exercising their competences in the field of nationality, should keep in mind EU legislation.¹⁴

⁹ Article 8 of the Maastricht Treaty "Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union."

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11992M/TXT>

¹⁰ Annex of the European Union Treaty – Declaration of a member state on citizenship

¹¹ Article 8/1 of the Amsterdam Treaty, October 1997 "Amending the Treaty on European Union, the treaties on establishing the European Communities, and certain related acts"

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11997D/TXT>

¹² Case C-184/99 Grzelczyk [2001] ECR I-6193 Paragraph 31

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61999CJ0184>

¹³ Paragraph 62 Case C-85/96 Martínez Sala [1998] ECR I-2691,

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61996CJ0085>

¹⁴ Micheteti and others vs. Spain https://eur-lex.europa.eu/resource.html?uri=cellar:5285e429-5c52-460a-a376-1b9235db3074.0002.03/DOC_2&format=PDF

I. The rights that European citizens enjoy

The Treaty on the Functioning of the EU envisages that the status of the European citizen includes the enjoyment and exercise of a series of rights, among which the freedom of movement within the Schengen region, and the opportunity to live, work, and study in almost any other EU country. Namely, the catalogue of these rights includes:

- *Free movement* to any other EU country is valued as one of the most important rights as EU citizens have the right to live, work, study in any EU country, without the need for a visa or work permit (Article 21, TFEU).
- *Right to non-discrimination*, according to which, EU citizens are protected against discrimination on grounds of nationality (Article 18, TFEU).
- *Right to vote*, according to which EU citizens have the right to vote and run in the EU country they live in, for Local Elections and European Parliament Elections (Article 21/1, TFEU).
- *Social rights*, according to which EU citizens have access to social security benefits, such as health care, pension, and unemployment benefits, when they live and work in another EU country (Article 9, TFEU).
- *Consumer rights*, according to which EU citizens are protected by EU consumer law, which guarantees the right to reimbursement, repair, or replacement for faulty goods and services (Article 12, TFEU)
- *Right to data protection*, according to which EU citizens have the right to check their personal data and protect against obtaining, processing, and administering them according to the General Regulation of the EU on Data Protection (Article 16, TFEU).

II. Rights of European citizens outside the EU territory

European citizens enjoy also the right to consular protection, from diplomatic and consular authorities of every EU country, when traveling or living outside the territory of the EU (Article 20, TFEU). It is worth mentioning that these rights are not standard and may change depending on the country they travel to/live in and the specific circumstances or conditions of the European citizen. Some of these main rights and protections include:

- *Right to consular protection*, according to which EU citizens who are outside its territory have the right to consular protection from diplomatic and consular authorities of every EU member state.
- *The right to travel visa-free* to many countries of the world, including tourist destinations. In some cases, a visa may be required, but EU citizens may be entitled to accelerated or simplified visa processes.
- *The right to health insurance*, according to which EU citizens may be able to use their European Health Insurance Card (EHIC) to receive medical treatment and care, in certain countries outside the EU.¹⁵

¹⁵<https://www.passportcard.de/en/international-health-insurance-3/?keyword=international%20health%20insurance%20card&device=c&netöork=g&gad=1>

III. Schengen Agreement

The Schengen Agreement is a treaty signed by EU countries, which have agreed to allow free movement of citizens in these countries, without the need for border controls or visas.¹⁶ The agreement has an important impact on the rights of citizens of EU countries and other signatory countries, as it facilitates travel and life in respective states.¹⁷

It is important to stress that the Schengen Agreement is not applied to all EU member countries because not all of them have signed it.¹⁸ Moreover, while the Schengen Agreement makes it easier for EU citizens to travel and live in other EU countries, there are still some restrictions, which have to do mainly with freedom of movement and the right to reside for citizens of other countries that have signed the Schengen Agreement but are not part of the EU or vice-versa, are part of the EU but have not signed this agreement. For instance, among the restrictions are those linked with the reduced time of stay in EU countries.

1.2 Regulation according to EU Directives

Directives play a very important role in the transposition and harmonization of EU rules with the domestic legislation of member states. As envisaged in the TFEU, the regulatory framework is completed also with EU directives on establishing common rules for all member states. Although there is no directive that directly instructs about gaining and losing citizenship, the EC has approved two important directives on the establishment of common rules for the length of stay, language capabilities, and other requirements for naturalization (otherwise known as granting citizenship to an individual who was not born in the respective country).

Council Directive 2003/109/EC of November 25, 2003, establishes the minimal criteria that regulate the status of citizens of third countries who are long-term residents (inhabitants) in one of the EU countries.¹⁹ The approval of this directive was inspired, among others, by the special EC meeting in Tampere, Finland, on October 15 and 16, 1999, where it was declared that the legal status of citizens of third countries needs to be aligned with that of citizens of Member States and that an individual legally residing in a member state, for a definite period of time and who possesses a long-term residence permit, should be granted, in that country, a group of uniform rights that are as close as possible to those enjoyed by EU citizens.

According to Directive 2003/109/EC, the fundamental criterion for obtaining the status of a long-term resident is the length of stay in the territory of an EU member country. Residence should be both legal and continued, in order to demonstrate that an individual is rooted in the member country. In order to obtain the status of long-term resident, citizens of third countries need to prove that they have the necessary resources and insurance in case of illness. To evaluate the possession of sustainable and regular income, member states may take into consideration factors such as contribution to the pension scheme and the fulfillment of tax obligations. Also, individuals who seek to obtain this status should not represent a risk to public policies and public safety. The notion of public safety may include conviction for the commission of serious crimes.

¹⁶<https://eur-lex.europa.eu/EN/legal-content/glossary/schengen-agreement-and-convention.html#:~:text=By%20signing%20the%20Schengen%20Agreement,and%20some%20non%2DEU%20countries.>

¹⁷ The Republic of Albania is part of the Agreement since 2010.

¹⁸ Countries such as Bulgaria, Romania, and Ireland are part of the EU but not signatories of the Schengen Agreement. Countries such as Switzerland, Norway, Lichtenstein, and Iceland are part of the Schengen Agreement but not part of the EU. <https://www.schengenvisainfo.com/non-schengen-countries/>

¹⁹ [EUR-Lex - 32003L0109 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/EN/legal-content/eur-lex/dir/dir_2003/2003109.dir.html)

Article 11, paragraph 1 of the Directive envisages that long-term residents enjoy equal treatment as EU citizens with regard to access to employment and the activity of self-employment, education, and professional training, including study scholarships in keeping with domestic law, recognition of vocational diplomas, certificates, and other qualifications, social insurance, social welfare and protection, according to the definition in national legislation, tax benefits, access to goods and services, and the provision of goods and services available to the public, housing procedures, freedom of organization and membership in an organization representing employees and employers, etc. Paragraphs 2, 3, 4, and 5 of this article envisage exemptions or restrictions to the exercise of these rights, such as in those cases when member states may restrict access to employment or self-employment activities when, in keeping with domestic legislation in force or community legislation, these opportunities or activities are reserved for EU or EEZ citizens.

Directive 2003/109/EC was amended in 2011 by Directive 2011/51/EU, according to which, beneficiaries of international protection should be able to obtain the long-term resident status in the member state that provided them international protection, subject to the same conditions as other citizens of third countries that obtained the long-term resident status. The long-term resident status for beneficiaries of international protection is evaluated by the directive as just as important in promoting economic and social cohesion, which is the fundamental objective of the EU, as envisaged in the TFEU.²⁰

Interlinked with EU citizenship (but not the way it is earned or lost) is Directive 2004/38/EC “On the rights of EU citizens and their family members to move and stay freely in the territory of EU member countries.”²¹ Its preamble envisages that EU citizenship is the fundamental status of citizens of member countries, when they exercise the right to free movement and residence. The scope of the directive, according to its article 1, includes:

- a. conditions regulating freedom of movement and of stay inside the territory of member states, by EU citizens and members of their families;
- b. the right to permanent stay in the territory of member states for EU citizens and members of their families;
- c. restrictions imposed on rights established in (a) and (b) for reasons of public policy, safety, or public health.

According to the definition provided in article 2, paragraph 1 of the Directive, European citizenship presupposes citizenship of an EU member country. The Directive envisages in article 6 that EU citizens have the right to stay in the territory of another member country for a period of up to three months, without any condition or formality, except for requests to possess a valid identity card or passport. This provision applies also to members of their family, who possess a valid passport and are not citizens of a member state. For EU citizens who remain for more than three months in a member country different from that of origin, this is justified in certain circumstances and conditions, linked with employment or self-employment in the receiving member state, possession of sufficient resources for themselves and family members, not becoming a burden for the social welfare system of the receiving member state during the period of their stay, have inclusive insurance coverage of illness in the receiving member country, attend studies or professional training in institutions that are accredited or funded by the receiving member state, etc.

²⁰ Directive 2011/51/EU <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0051>

²¹ Directive 2004/38/EC, which amends Regulation (EEC) No. 1612/68 and invalidates Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/KEE, 90/365/EEC and 93/96/EEC. Accessible at this link: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0038>

Referring to the contents of article 27 of the Directive, member countries may restrict the freedom of movement and residence of EU citizens and members of their families, in spite of their citizenship, based on public, safety, or public health policies. Measures taken due to public policies or safety should adhere to the principle of proportionality and are especially based on the behavior of the individual in question. Prior convictions shall not in themselves represent a basis for undertaking such measures, but the personal behavior of the individual should represent a real serious, present, and sufficient threat that affects one of the society's fundamental interests.

1.3 Standards elaborated in ECJ jurisprudence

The European Court of Justice (ECJ) is an EU institution that guarantees that the community law is interpreted and applied equally in every EU country, ensuring that EU member countries and institutions respect the community law.

In cases related to European citizenship, the ECJ has had an important role in guiding member countries with regard to their approach vis-à-vis granting and losing citizenship, taking into consideration that the citizenship of an EU country is at the same time European citizenship. The majority of cases submitted to this court on citizenship have to do with national law provision overlapping with EU legislation. In a repeated manner, the ECJ has underscored that although European citizenship (nationality) is defined by European law (treaties), the criteria for gaining and losing it are defined by the domestic law of the member state. However, it is important that the member countries keep in mind the community law when cases are filed with domestic courts.

In the case *Man Lavette Chen and Kunqian Catherine Zhu vs. the Secretary of State for the Home Department*,²² the ECJ decision had a direct impact on domestic legislation, as it spurred constitutional amendments in Ireland. In this case, the ECJ reiterated its prior position in jurisprudence,²³ that according to international law, it is up to each member state that, taking into consideration community law, it establishes the conditions for gaining and losing citizenship. The ECJ reiterated that it is not permitted that a member country restricts the issuance of citizenship of another country, establishing an additional condition for the recognition of this citizenship, for the purpose of exercising fundamental freedoms envisaged in the TFEU.²⁴

In the case *Belgium vs. Mesbah*,²⁵ the High Labor Court in Brussels (Cour du Travail de Bruxelles) addressed the ECJ to conclude with a preliminary decision according to article 177 of the EC Treaty (currently article 234 EC), conveying two questions on the interpretation of article 41(1) of the Cooperation Agreement between the European Economic Community and the Kingdom of Morocco.²⁶ Ms. Mesbah lived in Belgium since 1985, in the same house with her daughter and son-in-law. The latter two have Moroccan origin and citizenship, but they had earned Belgian citizenship through naturalization since 1970. According to Belgian legislation, an individual has the right to seek payment for disability, among others if the person is actually a resident in Belgium, a Belgian citizen or citizen of another EU member country. Belgian competent authorities rejected the request for disability payment for Ms. Mesbah, with the argument that she did not meet the legal criteria.

²² Paragraph 37 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62002CJ0200>

²³ See, in particular, Case C-369/90 Micheletti and others [1992] ECR I-4339, paragraph 10, and Case C-192/99 Kaur [2001] ECR I-1237, paragraph 19

²⁴ See, in particular, Micheletti, paragraph 10, and Garcia Avello, paragraph 28.

²⁵ Paragraph 29 <https://curia.europa.eu/juris/shoëëPdf.jsf?text=&docid=44834&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=4163032>

²⁶ Signed in Rabat on April 27, 1976, and approved in the name of the Community by the Council Regulation (EEC) No. 2211/78 of September 26, 1978.

Following the interpreting position of the ECJ on the case, it is up to the national court, in exercising its exclusive competence, to interpret and enforce domestic law, to determine the citizenship of the son-in-law of Ms. Mesbah, in keeping with Belgian law, especially domestic legislation and international private law, applicable at the time when the application for the disability payment was made and during the relevant reference periods, for evaluating the right to benefit social insurance.

Also, by its decision of January 2022, the ECJ Grand Chamber argued in the *Rottman* case that:

“The situation of a citizen who holds the citizenship of only one Member State, gives up that citizenship and, as a result, loses his/her status of an EU citizen, in order to obtain the citizenship of another member state, after receiving guarantees from the authorities of the latter that he/she will be granted that citizenship, by reason of its nature and consequences, falls within the ambit of European Law, when that guarantee is revoked to prevent the individual from regaining the status of an EU citizen.”

Article 20 of the TFEU should be interpreted in the sense that domestic responsible authorities and, depending on the case, domestic courts of the receiving member state, are asked to determine whether the decision to revoke the guarantee regarding granting citizenship of the receiving member state, which makes the loss of status of the EU citizen permanent for the person in question, is in keeping with the principle of proportionality, in light of the consequences it brings for the situation of that person.²⁷

An interesting development in ECJ jurisprudence, with regard to the relevance for gaining and losing citizenship in member countries and therefore the EU, is the position this court took in the case *Tjebbes and Others Minister van Buitenlandse Zaken*.²⁸ The ECJ decision further clarifies the previous decision on *Rottmann* and the broader application of the standard it established, on losing EU citizenship, aside from cases of withdrawing from it, for the purpose of gaining citizenship through fraud in a member country. In this decision, the ECJ reached two main conclusions. First, it confirmed the legitimacy, in general, of member countries to ensure areal connection between the state and its citizens, as well as the principle of the unity of citizenship within the same family, envisaging the (automatic) loss of citizenship in special (listed) circumstances. The recognition by the ECJ of the legitimate goal of Member States over a citizen's loss of citizenship in case there is no real connection, does not strip them of the guarantees that should exist (for individual cases) for losing citizenship *ex lege* (because of the law), based on the principle of proportionality, a position taken in the case *Rottmann*. This is the case because loss of citizenship of the member state causes the loss of EU citizenship and the rights that an individual enjoys according to EU legislation.²⁹ Therefore, the ECJ considers that in the context of the principle of proportionality, the legislation of member countries should envisage the possibility for the individual review of the consequences that loss of citizenship has (for the individual in question and their family members), from the viewpoint of EU legislation.³⁰

Moreover, when the loss of EU citizenship (as a result of the automatic loss of citizenship of a member state) appears to be incompatible with EU law, the citizen in question should be given the opportunity to regain citizenship after losing it (*ex tunx*)³¹. As a conclusion, the ECJ recognizes the

²⁷<https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=9335364>

²⁸Case C-221/17 MG Tjebbes and Others v Minister van Buitenlandse Zaken, accessible at: [CURIA - Documents \(europa.eu\)](https://eur-lex.europa.eu/uri/LEXIS/surrogelink?uri=CELEX:62017CJ0221&fromDoc=62017CJ0221-12&fromDocLang=en)

²⁹ 9 C-221/17 Tjebbes and Others, paragraph 40

³⁰ C-221/17 Tjebbes and Others, paragraph 41.

³¹ C-221/17 Tjebbes and Others, paragraph 42.

applicability of the EU Charter on Fundamental Rights and especially article 7 (family life) and article 24 (highest interest of the child), with regard to the proportionality of the review of complaints about loss of EU citizenship.

1.4 Positions of the European Parliament (EP) and Commission (EC) about gaining and losing EU nationality (citizenship)

In recent years, the European Parliament and Commission have undertaken a series of actions regarding obtaining and losing citizenship, especially with regard to the issue of “investors’ citizenship” schemes, otherwise known as “golden passport” issue in the EU.³²

These actions are pursuant to the resolution of the European Parliament (EP) of 2014,³³ which highlights concerns about a number of member states that have envisaged directly or indirectly schemes that result in selling EU citizenship to citizens of third countries. Also, an increasing number of Member States are issuing temporary or permanent residence permits for citizens of third countries that make investments in the member state in question. In some cases, these investment programs have potential negative side effects, such as distorting domestic home markets. In its concerns, the EP concretely targets the Maltese government, which recently presented the scheme for the full sale of Maltese citizenship, which automatically includes full sale of EU citizenship as a whole, without establishing any criterion or requirement about the residence. The EP considers this scheme of the Maltese Government’s granting citizenship, and any other scheme of member countries that includes directly or indirectly selling EU citizenship, that it undermines the real concept of European citizenship.

Regarding the above, in its resolution of 2014, the EP calls on member countries to recognize and fulfill the responsibilities they have for guaranteeing EU values and objectives, in issues that have to do with citizenship or visas for investors. It also calls on the EC, as the TFEU guardian, to express itself clearly on whether these schemes respect the provisions and spirit of the Schengen Border Treaties and Code as well as EU rules for non-discrimination. The EP reiterates and underscores that article 4(3) of the TFEU envisages the principles of ‘sincere cooperation’ between the EU and member states, which, with full mutual respect, help one another in fulfilling the duties that arise from the Treaties. The EP recognizes the fact that the issues linked with residence and citizenship are the competence of member states, but nevertheless, call on these countries to be careful when exercising their competences in this field and take into consideration potential side effects. Also, the EP notes that EU citizenship indicates the EU’s holding one standard and that it depends on an individual’s connection with Europe and Member States or personal ties with EU citizens, stressing that EU citizenship should never be a tradeable good.

In particular, the EP asks the EC to evaluate different citizenship schemes, under the light of European values, the contents and spirit of EU legislation and practice, and issue recommendations for the prevention of schemes that undermine values created by the EU and guidelines to access EU citizenship, through domestic schemes of member countries.³⁴

³² “Report – Comprehensive overview of developments on EU citizenship,” by S. Carrera, H. Schneider, N.C. Luk, February 2020, accessible at:

[*eu-citizen - type a report - comprehensive overview eu citizenship developments.pdf \(europa.eu\)](#)

³³ Resolution of the European Parliament, January 16, 2014, on EU citizenship for sale (2013/2295(RSP) accessible at: [Texts adopted - EU citizenship for sale - Thursday, 16 January 2014 \(europa.eu\)](#)

³⁴ “Report – Comprehensive overview of developments on EU citizenship,” by S. Carrera, H. Schneider, N.C. Luk, February 2020, p. 9 Report of the European Commission (2019): “Report of the European Commission for the European Parliament, Council, Economic and Social Committee, and the Committee on Regions (On investor citizenship and residence schemes in the EU)”, COM (2019) 12, Brussels, dated 23.1.2019, accessible at:

About 5 years since this resolution, the EC came out with a report on January 23, 2019, “On investor citizenship and residence schemes in the EU.”³⁵ The report analyzed existing schemes for the issuance of citizenship and residence in EU member countries, as a result of investment. According to the EC, in recent years there has been a growing trend in investor citizenship (“golden passport”) schemes and residence schemes (“golden passports”), which seek to attract investment by granting investors citizenship or residence permits in the respective membership country. Such schemes have raised concerns about some real risks, especially with regard to security, money laundering, fiscal evasion, and corruption.

The EC notes that three member states operate golden passport schemes, whereby citizenship is granted upon less strict conditions than in ordinary naturalization regimes, especially without fulfilling the conditions for preliminary stay or residence in the country in question. Namely, Bulgaria, Cyprus, and Malta envisaged in 2005, 2007, and 2013, broad schemes that aimed at attracting investment from third country citizens, facilitating their access to acquiring citizenship. The criterion for acquiring citizenship is investment, which should meet some conditions. In Bulgaria, an overall investment of about 1 million euros is required in order to benefit from the fast investor citizenship scheme. In Cyprus, there is a requirement for a minimal investment of 2 million euros, together with ownership of a property in the country. In Malta, there is a need for a lower investment compared to the previous two countries, namely a contribution of 650,000 euros, paid to a national investment fund, together with an investment of 150,000 euros and a request to possess or rent a piece of property in Malta. In Cyprus and Malta, additional investments are required for other family members. There are three different investment alternatives in these countries, namely investment in capital, investment in real estate, investment in government obligations, and single contributions to the state budget. Aside from the request for investment, applicants should also pay non-reimbursable administrative fees, as part of the application process. Cyprus and Malta have evidently higher fees than Bulgaria.³⁶ In all three countries, applicants are equipped with residence permits at the start of the procedure of acquiring citizenship. Possession of a residence permit for the time in question (the application) is sufficient for being legitimized in this scheme. It is not a request for acquiring citizenship according to this scheme, if the person has effective stay or residence, in the sense of physical presence for a regular and prolonged period of time, in the territory of the member country in question, while the person is equipped with the residence permit.³⁷

Such schemes have repercussions for the EU in general. Although these are internal schemes of the states, they are intentionally traded and often advertised explicitly as a way to gain EU citizenship, together with related rights and privileges, including in particular the right to free movement. Investor citizenship schemes differ from investor residence schemes (“golden visa”), which seek to attract investments in exchange for residence rights in the country in question and exist in twenty EU member states. However, the real risks of such schemes are similar to those established by investor citizenship schemes. Furthermore, these schemes affect other member countries because a valid residence permit gives some rights to citizens of third countries to travel freely, especially in the Schengen area.

In this report, the EC pointed out the effects of investor citizenship schemes operated by third

[EUR-Lex - 52019DC0012 - EN - EUR-Lex \(europa.eu\)](#)

³⁵ Ibid., p. 9.

³⁶ Report of the European Commission (2019): “Report of the European Commission for the European Parliament, Council, Economic and Social Committee, and the Committee on Regions (On investor citizenship and residence schemes in the EU)”, COM (2019) 12, Brussels, dated 23.1.2019, p. 3.

³⁷ Ibid., p.4.

countries with privileged access to the EU (including, in particular, candidate countries for EU membership).

The above-mentioned risks are further enhanced by shortcomings that the EC has noticed in the transparency and governance of such schemes. This is because information available both on the investor citizenship and residence schemes in member states is incomplete. For instance, clear statistics on received, accepted, and refused applications are lacking or insufficient. There is a lack of mechanisms to ensure cooperation between member states about investor citizen schemes, especially security checks. The EC expresses concern regarding natural risks in investor citizenship and residence schemes also because of the fact that these risks are not always alleviated adequately by measures taken by member states.³⁸

At the end of this report, the EC expresses the engagement to monitor steps undertaken by member states to guarantee transparency and good governance in the implementation of the schemes in order to address particularly the infiltration of organized crime groups from outside the EU into the economy, money laundering, corruption, and fiscal evasion of EU member countries. For this purpose, the EC created a group of experts to monitor further issues of transparency, governance, and security. The group of experts results to have met 5 times,³⁹ during the period of 2019-2022 (four times in 2019 and only 1 time in 2022) and has had as its objective the observation of specific risks coming from security checks, including processes for risk management that include safety of accounts, money laundering, fiscal evasion, and corruption risks, and to treat aspects of transparency and good governance with regard to the implementation of the schemes.⁴⁰

Pursuant to concerns expressed earlier and measures taken continuously to assess the situation and risks identified in these schemes, on March 9, 2022, *the EP approved, upon proposal of the Commission, resolution 2022/C 347/08, regarding obtaining citizenship and residence through investment.*⁴¹

The preamble of this resolution mentions, among other things, the letters of official announcement of the Commission of October 20, 2020, to Cyprus and Malta, about the start of violation procedures regarding their investor citizenship schemes and the official letter of the EC to Bulgaria on the same date, which underscores concerns regarding the citizenship scheme for an investor, seeking further information.⁴² Moreover, the proposals of the resolution are based also on the contents of previous EP resolutions on the sale of EU citizenship (2014), financial crimes, fiscal evasion and avoidance (2019), the rule of law in Malta, after discoveries around the murder of the Maltese journalist and blogger Daphne Caruana Galizia (2019 and 2021), on an inclusive EU policy for the prevention of money laundering and terrorism financing (2020), on the EU strategy on security in the EU (2020).⁴³

In its resolution, the EP affirms the earlier concern that the existence of investor citizenship schemes affects all member states, because a decision of a member state to grant citizenship to the investor, automatically generates rights regarding other member states, especially the right to move freely, the right to vote, and run in local and European elections, the right to consular protection outside the

³⁸ Ibid, p.23.

³⁹ [Activities of the Group of Member State experts on investor citizenship and residence schemes \(europa.eu\)](https://europa.eu/activities-of-the-group-of-member-state-experts-on-investor-citizenship-and-residence-schemes)

⁴⁰ Seeking information systemically from member countries, which is reflected in the minutes of meetings held to date.

⁴¹ [European Parliament resolution of 9 March 2022 with proposals to the Commission on citizenship and residence by investment schemes \(2021/2026\(INL\)\) \(europa.eu\)](https://europa.eu/european-parliament/resolution-of-9-march-2022-with-proposals-to-the-commission-on-citizenship-and-residence-by-investment-schemes-2021/2026(INL))

⁴² Ibid., p. 1.

⁴³ Ibid., p. 2.

EU, rights to access to internal market to exercise economic activities. “Investor citizenship” schemes and “investor residence” visas or permits applied by certain EU countries also generate external risks to other EU countries, such as corruption, money laundering, etc., which require regulation from the EU.⁴⁴

In particular, the EP notes that a risk arises from third countries that have investor citizenship schemes⁴⁵ and benefit from visa-free travel to the EU, because their citizens may purchase the citizenship of these third countries and may enter in the EU without additional checks. The EC emphasizes that the risks have worsened for countries that are candidates for membership and that have such schemes, such as Serbia, Albania, Turkey, Montenegro, and North Macedonia. In these states, the expected benefits of future accession into the EU and visa-free travel within the EU area is considered a factor.⁴⁶ The EP asks the EC to exercise as much pressure on these countries as possible, in order for them to invalidate investor citizenship and reform investor residence schemes, in accordance with EU laws and standards. In this regard, the EC is also asked to present in 2022, based on article 77(2), letter (a), of the TFEU, proposals to amend Regulation 2018/1806 of the EU. According to the revised enlargement methodology of the EU, it is required that issues related to investor citizenship and residence schemes are considered complex and treated in different negotiating groups and chapters. The EP underscores the importance of gradual and energetic harmonization of these schemes with EU law by candidate and potential candidate countries, proposing that the interruption of investor citizenship schemes and the regulation investor residence schemes are included in the accession criteria.⁴⁷

The resolution envisages a special annex that contains concrete proposals for an inclusive legislative package regarding the issue in question. Among the main proposals is the gradual removal throughout the EU of investor citizenship schemes by 2025, through a system built on rigorously measurable and enforceable system, which seeks to reduce the number of citizenships granted to investors, thus leading to the gradual removal of these schemes. It is also proposed to have an inclusive regulation that envisages unified rules for investor residence schemes (visas) in the EU. Such a regulation would ensure harmonization of practice of member countries and limit the risks presented by such schemes, thus boosting transparency and governance. The regulation should contain standards and procedures that enable careful, increased, and rigorous controls for applicants and the source of their assets. In particular, all applicants need to be checked by the member state authorities, through all relevant databases at the national, EU, and international levels, while emphasizing respect for fundamental rights standards. Furthermore, it is required to have independent verification of submitted documents, a full control of all police background, prior and current civil and criminal judicial processes, interviews with applicants, and full verification about the creation of wealth of the applicant compared to the incomes that he/she possesses.

⁴⁴ Ibid., p. 3

⁴⁵ Antigua and Barbuda, Dominica, Grenada, Saint Kitts and Nevis and Saint Lucia.

⁴⁶ Ibid., p. 7.

⁴⁷ Ibid, p. 9.

2. Ways to gain citizenship in EU member countries

The European Convention on Nationality, drafted by the Council of Europe (CoE) in 1997, represents an important international act that seeks to promote common standards in the legislative aspect of citizenship between member countries. The Convention served as a framework for harmonizing and improving internal citizenship laws in member countries that adhere to the Council of Europe and ratified it. This Convention was ratified by only 13 of 27 EU member countries.⁴⁸ As a CoE member country, Albania signed the Convention in 1999 and ratified it in 2004.

The Convention embodies the principles and rules implemented for all aspects of citizenship, which facilitate gaining and new citizenship and the resumption of a previous citizenship, guarantees that citizenship may only be lost for good reasons and may not be removed arbitrarily, guarantees that procedures that regulate applications for citizenship are fair and appealable, and regulates the situation of individuals who are at risk of being left without citizenship. The Convention also covers multiple citizenship, military obligations, and cooperation among state parties. The Convention represents a synthesis of the latest thinking on this issue in the domestic law of states and the international one, and also reflects demographic and democratic changes in Central and Eastern Europe, since 1989. Some of its fundamental principles are the prevention of citizenship, non-discrimination on issues of citizenship, on the basis of sex, religion, race, color, national or ethnic background, etc.⁴⁹

By promoting harmonization and cooperation among European countries, the Convention aims at having citizenship laws and procedures in accordance with international standards and principles of human rights. The approval of the Convention serves as an instrument for promoting sustainability and cooperation on issues of citizenship throughout the European continent, taking into consideration the fact that the signatory parties are EU countries and not EU member countries.

Some of the key standards envisaged in this Convention on gaining citizenship include acquiring citizenship by birth in the territory of a state party (*jus soli*), acquiring citizenship by background (*jus sanguini*), gaining citizenship through marriage, acquiring citizenship through residence and naturalization. According to article 6 of this Convention, the ratifying states should facilitate procedures for acquiring citizenship for these cases:

- a. **Acquiring citizenship *ex lege***, as is the case of acquiring citizenship by children, of the nationality of one of the parents at the moment of their birth (when the parent holds the citizenship of the country that is a party to this Convention). Also, this form of acquiring citizenship applies to infants found in its territory, who would be considered “stateless” should this provision not exist.
- b. **Acquiring citizenship by children born in the territory of a state party to this Convention who do not possess any other citizenship**. This category includes two forms of acquiring citizenship, by birth *ex lege* and for children left without citizenship.
- c. **Acquiring citizenship by naturalization** for persons who remain legally and continuously in the territory of the state party to the Convention, for a period no longer than 10 years.

⁴⁸ Austria, Bulgaria, Czech Republic, Denmark, Finland, Germany, Hungary, Luxembourg, Netherlands, Portugal, Slovakia, and Sweden.

⁴⁹ <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=166>

- d. Paragraph 4 of this article envisages that the internal right of state parties should have facilitations for acquiring citizenship by a certain category of persons (who are not included in the above categories) such as: spouses of their citizens, children of one of their citizens, children with one of the parents who acquires or has acquired their citizenship, persons born in its territory and live there legally and continuously, persons who live legally and continuously in its territory for a period of time starting before they turn 18 years of age, persons without citizenship and known refugees, who reside legally and continuously in its territory.

Article 18 of the European Convention on Nationality stipulates that in deciding on granting citizenship, each member state should take into consideration the real and effective connection of the interested person to the state, whose citizenship he/she wishes to acquire.⁵⁰ This principle has been initially realized in the case *Nottebohm (Lichtenstein vs. Guatemala)*, adjudicated in 1995 by the International Court of Justice, one of the 6 main bodies of the United Nations. In its decision, the ICJ argued that granting citizenship is based on recognition by other states, only if there is a real connection between the individual and the state who grants its citizenship to the individual in question.⁵¹

The 27 member countries of the EU have envisaged acquiring citizenship by background (*jus sanguinis*) as the first, automatic manner of acquiring it. acquiring citizenship by birth (*jus soli*) is mainly used for cases of infants and children who may be left without citizenship. Ireland, Germany, and Portugal may grant citizenship to children born in their territory, in spite of the citizenship of their parents. Granting citizenship to foreign citizens is done through the process of naturalization, which establishes the material and procedural conditions that an individual should fulfill in order to become a citizen of a certain country. The conditions for naturalization include requirements such as the minimal legal period of stay in a country, knowing the language, cultural and social and legal structure of the country, the oath of loyalty, clear criminal status, possession of adequate resources, to ensure a living without using public funds, etc. The essential indicators of these conditions are established in the internal legislation of each country and may differ considerably from one country to the other. For instance, some member countries envisage as a criterion the taking of the language exam as proof of its knowledge, while others test the language of the applicant in a face-to-face interview; some countries may require the possession of a minimum level of income, while others require a certificate of employment; some countries require continued physical presence on condition of residence, while others deem that a living address suffices.⁵²

The GLOBALCIT observatory identifies 27 ways to acquire citizenship, through which individuals may become citizens of a state. The first five ways in this typology refer to acquiring citizenship through birth, while there are at least 21 other ways through which individuals may be naturalized. The concept of 'ordinary naturalization' refers exclusively to acquiring citizenship due to residence. Meanwhile, the concept of 'facilitated naturalization' refers to any cause for naturalization that removes or invalidates fully any of the requirements for acquiring citizenship in a given country. All 27 EU member states have an ordinary naturalization path and use different reasons for granting citizenship to foreign citizens: spouses of their citizens, citizens of other EU member countries, talented individuals, etc.

⁵⁰ European Convention on Nationality, article 18, <https://rm.coe.int/168007f2c8>

⁵¹ *Nottebohm (Lichtenstein v. Guatemala)* (icj-cij.org)

⁵² Report – Inclusive overview of developments regarding EU citizenship,” by S. Carrera, H. Schneider, N.C. Luk, February 2020, p. 6-7 eu-citizen - type a report - study on acquisition and loss of citizenship.pdf (europa.eu)

a) The Case of Cyprus and Malta

Cyprus began to implement the golden passport scheme (investor citizenship) from 2007. The case in question drew attention due to a scandal published in 2019, after an investigation by the Al Jazeera media network, which discovered that some individuals, including those with criminal precedents and facing charges of corruption, had acquired Cyprian citizenship through this scheme.⁵³ The investigation shed light upon the lack of proper care in the process of verification by the country's authorities, which enabled citizens with dubious criminal status to acquire European citizenship. The case had to do with 4 officials of Cyprus, including the parliament speaker, who promised an unnamed investigative journalist, 'masked' as the perpetrator of criminal offenses in China, assistance and readiness to help him acquire a Cyprian passport. This was done through the golden passport program, in exchange for an investment of 2.15 million euros.⁵⁴ The case rang the alarm bells in the EU while a criminal process began in the criminal court of the Cyprian capital, Nicosia.⁵⁵

In October 2013, Malta approved Act XV, which changed the Maltese Citizenship Act and envisaged the Individual Investor Program.⁵⁶ The program spurred negative reactions both in Malta and the EU because it enabled granting Maltese citizenship in exchange for a contribution of 650,000 euros.⁵⁷

b) Investigation procedures by the EC

On October 20, 2020, the EC began procedures for violations against Cyprus and Malta, sending them official notification about their investor citizenship schemes, known as the "golden passport" schemes. The EC considered that these countries, which were EU members, granting their citizenship (and therefore of EU citizenship) in exchange for a set payment of investment and in the absence of a real connection between the individual with the member states in question, is not within the principle of sincere cooperation, envisaged in article 4(3) of the TFEU. The schemes undermine the integrity of the EU nationality status, envisaged in article 20 of the TFEU. The EC asked the Cyprian and Maltese governments to respond within two months of official notification about the violation procedures.

Pursuant to this communication, also in October 2020, Cyprus reacted immediately and announced that it would immediately put an end to the investor citizenship scheme, mentioning the need to "invalidate any related misinterpretation and abusive practice." Cyprus invalidated the golden passport scheme and stopped accepting new requests on **November 1, 2020**. However, it continued to review pending applications. As a result, the EC decided to submit a reasoned opinion on June 9, 2021, considering that the concerns presented in the letter of official notification were not addressed by Cyprus. Since then, Cyprus stopped reviewing applications and, as of October 2021, lifted the citizenship of 39 investors who had acquired it earlier.⁵⁸

⁵³ <https://www.aljazeera.com/news/2020/8/23/exclusive-cyprus-sold-passports-to-criminals-and-fugitives>

⁵⁴ https://www.aljazeera.com/news/2020/10/15/cyprus-house-speaker-resigns-following-al-jazeera-investigation?traffic_source=KeepReading

⁵⁵ In the trial of November 30, the 4 officials, faced with the charges against them, including a plot to overturn the Republic, bribery and corruption, in the end, were released on a bail varying from 50,000 euros (50,000 USD) up to 30,000 euros each.

⁵⁶ Maltese Citizenship Act https://ec.europa.eu/migrant-integration/sites/default/files/2009-02/doc1_7488_4301431.pdf

⁵⁷ Maltese Citizenship Act file:///C:/Users/User/Downloads/Individual%20Investor%20Programme_Malta_TMF%20Group.pdf

⁵⁸ June violations package: main decisions https://ec.europa.eu/commission/presscorner/detail/en/inf_21_2743

Meanwhile, also in 2020, the Maltese government announced that it would gradually remove the investor citizenship scheme (golden passports), but in fact, continued to defend the program as a legitimate tool for encouraging investments in the country's economy. Two years later, with the start of the war in Russia and Ukraine, the EC asked relevant European states to immediately stop issuing passports.⁵⁹ Malta reacted by suspending the issuance of golden passports for Russian and Belarussian citizens, but continued to apply the scheme for citizens of other citizenships. In the absence of the expected reaction, the EC sent Malta a reasoned opinion on April 6, 2022, asking it among others to immediately stop the scheme of issuing citizenship through investment, otherwise the EC would send the case to the ECJ. Malta's response was not deemed satisfactory by the EC, which on 29.09.2022 decided to refer Malta to the ECJ according to article 258(2)⁶⁰ of the TFEU, regarding the golden passport scheme. The EC deemed that granting EU citizenship in exchange for a set payment or investment, without any real connection to the member country in question, is not in accordance with the principle of sincere cooperation envisaged in article 4/3 of the EUT and article 20 of the TFEU. This case is still pending at the ECJ.⁶¹

⁵⁹ COMMISSION RECOMMENDATION of 28.3.2022 on immediate steps in the context of Russia's invasion of Ukraine with regard to investor citizenship schemes and investor residence schemes https://home-affairs.ec.europa.eu/system/files/2022-03/recommendation%20limit%20access%20individuals%20connected%20Russian%20Belarusian%20government%20citizenship%20residence%20EU%20through%20investor%20schemes_en.pdf

⁶⁰ Article 258, if the Commission considers that a Member State has failed to fulfill an obligation according to the Treaties, it shall render a reasoned opinion on this matter, after giving the state in question the opportunity to present its feedback. If the state in question does not enforce the opinion within the period of time set by the Commission, the latter may take the case before the European Union Court of Justice.

⁶¹ https://ec.europa.eu/commission/presscorner/detail/en/ip_22_5422

3. Citizenship according to Albanian legislation

The Constitution of the Republic of Albania envisages that anyone who is born while having even one of the parents with Albanian citizenship, shall automatically gain Albanian citizenship. Albanian citizenship is also acquired for other causes, envisaged by law. Furthermore, the Constitution envisages that the President is the institution that has the attributes to grant Albanian citizenship and allows dropping it according to law. Fundamental rights and freedoms, as well as obligations envisaged in the Constitution for Albanian citizens apply the same for foreigners and individuals without citizenship in the territory of the RA, except for cases when the Constitution especially connects the exercise of certain rights and freedoms particularly to Albanian citizenship.⁶²

According to article 81, paragraph 2, letter “b” of the Constitution, the law on citizenship is approved by a qualified majority of three fifths of all members of the Assembly. As a result, the law ranks high in the pyramid of laws, above laws approved by a simple majority.

On 29.07.2020, the Assembly of the RA approved the new law no. 113/2020, “On citizenship,” which invalidated the previous law on Albanian citizenship, of 1998 (amended) as well as CMD of 2013, issued on the basis of and pursuant to this law.⁶³

3.1 Comparative view of the latest two laws on citizenship

The new law on citizenship clarifies the concept of citizenship (vis-à-vis the definition envisaged in the previous law), as the sustainable legal connection between an individual and the Albanian state, which is expressed in fundamental rights and freedoms, as well as mutual obligations, and that does not indicate the person’s ethnic background.⁶⁴

The accompanying report of the draft law mentions the reasons why a new legal initiative has been undertaken on issues of citizenship. Besides resolving various issues highlighted as a result of the implementation of the previous law, the new initiative aims to address in a more complete manner the ways of acquiring, re-acquiring, and relinquishing Albanian citizenship, aligning them fully with the European Convention on Nationality. The draft law envisages as one of the ways to acquire Albanian citizenship that through “descent,” which is the family connection up to three levels of the applicant with the person before him born of Albanian citizenship (article 2, letter “d”). It revised the criteria for acquiring, re-acquiring, and relinquishing Albanian citizenship, by clarifying and specifying, where it was deemed necessary, such as the criterion of stay, residence in a continued manner, possession of adequate income or financial resources for living, the definition of the criterion for knowledge of the Albanian language, and basic knowledge of the history of the RA.⁶⁵

In principle, it is worth stressing that the concept of golden passports was supported both by the regulation of the old law of 1998 (amended) and the new law in force (2020). The main distinction is that in the new law, this concept or scheme is expanded and further clarified.

⁶² Articles 16/1, 19, 92, letter “c”.

⁶³ [Ligji-per-Shtetesine-nr-113.2020.pdf \(mb.gov.al\)](#)

⁶⁴ Definition referred to in law no. 113/2020

⁶⁵ Report on the draft law “On citizenship,” accessible at this link: [20190830104416Relacioni SHTETESIA.pdf \(parlament.al\)](#)

Concretely, referring to article 9, paragraphs 6 and 7 of the old law on citizenship of 1998 (amended), one way to acquire citizenship by naturalization is also that of admitting as Albanian citizens those foreigners who have turned 18 years old, if that fact does not infringe upon the security and defense of the Republic of Albania, and when our country has a scientific, **economic**, cultural, and national interest.⁶⁶

In the new law no. 113/2020, this way of acquiring citizenship is not included in the cases of gaining citizenship by naturalization, but as a special case of acquiring citizenship (article 9 of the law). According to paragraph 1 of this article, Albanian citizenship may be acquired by the foreign citizen who has turned 18, when he/she does not pose a threat to public order and national security of the RA, and in cases when our country has a national interest or an interest in the field of arts, science, culture, education, **economy** and sports. Referring to this provision, compared to the previous law, the provision expands the cases of a foreign citizen acquiring citizenship who does not meet the other legal criteria, including other cases except scientific, economic, cultural, education, arts, and sports reasons. The restriction or legal reservation in the old law for this category of citizens refers to non-violation of security and defense of the RA, while the new law uses more restrictive concepts, such as public order (which is broader) and national security.

According to the new law, for the drafting of special programs, establishment of specific rules of special control of security and cleanliness of the person, at the highest standards and monitoring their implementation, a special state agency is created, which is organized and functions on the basis of a CMD. Likewise, the criteria for acquiring citizenship, according to these special programs, the application procedures, rules for conducting necessary verifications and controls, are approved by CMD. The authorization for regulation by by-laws of this way of acquiring citizenship was lacking in the previous law, which according to the drafters of the new law has led to the inability of responsibility institutions to follow an established and unified procedure for all instances of granting citizenship in this manner.⁶⁷

The concept of investor citizenship or the golden passports is accepted in the new law of 2020 by the Parliamentary Committee on National Security. This Committee argues in the report on the review of this law that one of its objectives is the development of the economy and reduction of unemployment, by granting Albanian citizenship to foreigners for strategic investments, which would indirectly affect the development of the economy and reduction of unemployment. According to the Committee, the regulation and establishment of the special/restricting criteria for strategic investments creates the proper filters for granting Albanian citizenship to individuals who really make investments that affect the development of the country's economy.⁶⁸ It is disturbing that in this report, it is considered that the draft law does not seek alignment with the EU *acquis*, but is in harmony with the European Convention on "Nationality," and the Convention for "Reduction of statelessness." Furthermore, in drafting this draft law, the inter-governmental working group conducted research of the systems of several EU member states, such as: Italy, Croatia, Slovenia, etc. and took into consideration the legislation of those countries that have a similar system to our country's, not aiming at aligning the model, but the achievement of standards. So, although Albania had already begun a process to open accession negotiations, which was concretized by a decision of March 2020 of the European Council, for this draft law, it was not deemed necessary to review positions on practices that had been harshly criticized on EU passports, by EU institutions.

⁶⁶ <https://www.adisa.gov.al/ep-content/uploads/2019/04/Law-No.-8389-1998-On-albanian-citizenship.pdf>

⁶⁷ See page 5 of the accompanying report on the draft law, accessible at: 20190830104416Relacioni SHTETESIA.pdf (parlament.al)

⁶⁸ See page 4 of the report of the Committee on National Security, accessible at: 20200729082252raporti i korrigjuar i shtetesise.pdf (parlament.al)

3.2 Decree of the President of the RA to send back to the Assembly law no. 113/2020

Law no 113/2020 was returned to the Assembly by the President of the Republic by Decree no. 11591, dated 10.08.2020.⁶⁹ Among the arguments for sending back this draft law has to do with article 9, which addresses special cases of acquiring Albanian citizenship. According to the institution of the President, this provision violates article 19 and 92 of the Constitution, and causes overlapping of state institutions by duplicating competences and expanding the administration, in violation of efficiency and by causing direct costs for the state budget. Furthermore, some question marks have been raised on lack of clarity regarding some concepts referred to in paragraphs 2 and 3 of article 9 of the law, namely:

- I. what is to be understood by “special programs”?
- II. which are the subjects on which the specific rules of special control of security and cleanliness of the figure will be applied?
- III. which are highest standards of a clean figure and of security and who determines them?
- IV. which is the institution that will convey the proposal for the acceptance or refusal of granting citizenship to the President of the RA?
- V. why create differentiated treatment in procedure regarding the verification of security and cleanliness of the figure compared to other ways of acquiring citizenship by naturalization or origin?
- VI. which will be the role and function of the special state agency as the law does not envisage provisions on its role and functions?

The President considers that these formulations are unclear and in complete lack of coherence with the internal legal order, as well as with article 9 of the law itself, creating new institutions (Special Agency) whose functions and duties overlap with those carried out by specialized bodies (such as State Police and SHISH).

After reviewing decree no. 11591 of the President, the Committee on National Security, the with majority of the votes of members present in the meeting, voted to reject this decree and pass it to the plenary session in accordance with article 85/2 of the Constitution. With regard to the arguments on the above matters, it is noticed that the report of the Parliamentary Committee quotes the statements of the Deputy Minister of Interior and the arguments based on the systematic or harmonious interpretation of the provisions of this law (on special cases of acquiring citizenship) are lacking. According to the Deputy Minister of Interior, the special programs are those that always have to do with education, science, and economy, whereby outstanding characters that have made contributions of the country, should in a way be compensated and rewarded for their work. In fact, this terminology is not explained in the text of the relevant article of the law of definitions. Furthermore, regarding the application of specific rules, the report does not reflect arguments as to why they are different, in cases of different ways of acquiring citizenship. With regard to the role and function of the agency, it is mentioned that it will be regulated by by-laws and is an agency reporting to the Minister of Interior.⁷⁰

⁶⁹ See page 12 of the Report of the Parliamentary Committee on National Security that reviewed the President’s Decree, accessible at: [20200918130449Raport Dekreti per Shtetesine.pdf](https://www.parlament.al/20200918130449Raport%20Dekreti%20per%20Shtetesine.pdf) (parlament.al)

⁷⁰ Ibid.

The Assembly decided to reject the President's decree in the plenary session. Further on, it results that the new law on citizenship was published in the Official Gazette no. 174, dated 29.09.2020, and therefore entered into effect and is applicable starting 15 days from it entered into force, namely October 15, 2020.⁷¹

3.3 Question marks of by-laws on the implementation of special cases of acquiring citizenship, according to law no. 113/2020

Article 24 of the new law on citizenship envisages the bodies responsible for issuing by-laws, pursuant to its provisions and the deadlines for issuing them.

Regarding by-laws that have to do with paragraphs 2 and 3 of article 9 of law no. 113/2020 that envisages acquiring citizenship through special programs, including the concept of the investor's citizenship, the Council of Ministers is tasked with issuing them, within 3 (three) months since the law's entry into force.

In fact, the authorization of the new law on citizenship for the issuance of this by-law, does not fully respect constitutional requirements envisaged in article 2 of article 118 of the Constitution. Among the constitutional criteria that the by-law should pursue, for the issuance of by-laws, is that it establishes not only the competent body and the issues to be regulated (as envisaged by the law on citizenship), but also regulate the basic principles on the basis of which these acts will be issued.

The case law of the Constitutional Court interprets that article 118 of the Constitution reflects the concept of *legal reservations*, which restrict or guide the normative power of executive bodies to regulate certain relations by by-laws. This *legal reservation* creates the possibility for the concrete matter regulated partially by law, may be detailed further by by-laws, abiding by the principles and boundaries established by law. Only then may the authorization of the lawmaker for the issuance of by-laws may be considered realized within the boundaries of constitutionality.⁷² *In its jurisprudence, the Constitutional Court has made the distinction between the absolute and the relative legal reservation.*

The absolute legal reservation includes issues, for which the Constitution envisages expressly that they are regulated by law and not by by-laws. These issues fall within the exclusive competence of the lawmaking power and may not be regulated by by-laws. The constitutional provision of regulation by law as a guaranteeing function of overall public interest, for reasons that it guarantees that in certain fields, particularly delicate ones, the decisions are made by the Assembly, as the body representing sovereign power.⁷³

In the case of the *relative legal reservation*, the concrete case may be regulated also by by-laws, but they should rigorously follow the requirements of article 118 of the Constitution.⁷⁴ In the concept of the relative legal reservation, the term "law" used in the constitution and in legislation in general, in some cases, refers to a broad interpretation that includes by-laws.⁷⁵

⁷¹ [Pamja e dokumentit - Qendra e Botimeve Zyrtare \(qbz.gov.al\)](#)

⁷² See decision no. 60, dated 16.09.2016 and decision no. 4 (2021), of the Constitutional Court

⁷³ See paragraphs 64, 65 and 90 of decision no. 4 (2021) of the Constitutional Court.

⁷⁴ See decision no. 19, dated 09.07.2009 of the Constitutional Court.

⁷⁵ See decision no. 20, dated 11.07.2006 of the Constitutional Court.

As mentioned above, referring to article 19/1 and 92 letter “c” and article 81/2/b of the Constitution, Albanian citizenship is acquired also for other reasons envisaged *by law* that is approved by a qualified majority, while the President is the constitutional institution that enjoys the attributes for granting Albanian citizenship and allows relinquishing it according to law. The authorization that the new law no. 113/2020 makes of the PM is disputable as the criteria for acquiring citizenship in special cases appear to be part of the absolute legal reservation (i.e., they may not be established by by-law but should be envisaged in the law). With regard to the procedure for acquiring this form of citizenship, although it may be interpreted that we are in front of relative legal reservation, the basic principles should be regulated by a law that is approved by a qualified majority.

While for other ways of acquiring citizenship, the law no. 113/2020 itself envisages in a clear and exhaustive manner the criteria and basic principles of the application procedure, exclusively for the special ways of acquiring citizenship, these criteria and procedural aspects are delegated to the PM to regulate by by-laws. Concretely, let’s analyze separately the other ways of acquiring citizenship according to law no. 113/2020 vis-à-vis the special way or cases of acquiring it according to article 9 thereof. Article 5 of the law envisages acquiring citizenship by birth and the criteria envisaged in the formulation of the provision are clear and exhaustive. Article 6 of the law envisages acquiring citizenship by origin and, besides the criteria envisaged in paragraph one of this provision, it also envisages other criteria, with legal references to the law, article 8, paragraph 1, letters “dh” and “e” of it. Article 7 establishes clear criteria for acquiring citizenship by birth in the territory of the RA. Also, article 8, acquiring citizenship by naturalization, envisages some ways of acquiring citizenship, envisaging similar or special criteria, but clearly expressed in the law, according to the typology of cases that this provision envisages. Meanwhile, the opposite happens in the case of article 9 of the draft law, where the criteria for special cases of acquiring citizenship are of a general nature and the PM is authorized to regulate them by by-laws.

A differentiation is made also with regard to the procedure for acquiring citizenship according to the ‘classical’ ways from the procedure of special cases. Concretely, the procedure for acquiring citizenship according to article 5, 6, 7 and 8 of the law lists the institutions where the initial application is filed, the deadlines for their review, the return of the request if the documentation is not complete, and further legal ways, up to the submission of the proposal by the responsible Minister to the President or the rejection of the request when the criteria are not met (as well as the guarantees for appeals). This procedure is envisaged in articles 17 and 18 of the law, according to which, the request is filed with local responsible structures of State Police where the person resides or the diplomatic mission or consular post of the RA, accredited to the country where the person resides. Further on, the local structure of State Police conducts the necessary verifications for evaluating the infringement of public safety and, within one month from the submission of the request, sends the request and the accompanying documentation to the structure responsible for addressing issues of citizenship at the ministry. If the request has been presented to the diplomatic mission or consular post, the latter sends the request and the accompanying documentation to the ministry responsible for foreign affairs, which, within 15 (fifteen) days, conveys it for review to the structure responsible in the ministry. The Ministry, within 6 (six) months, reviews the presented documentation in order to verify the fulfillment of the conditions established in this law and conveys to the President of the Republic the proposal for issuing the decree. If the documentation is not complete, within 45 (forty-five) days, the ministry sends it back to the structures and institutions that presented it. If after verifications, it results that the conditions established in this law are not met, the Ministry, through the relevant structures and institutions, notifies the interested person about the refusal of the request. Both articles 17 and 18 authorize the responsible ministers to issue more detailed rules about documentation that the applicants should present, the fees, and procedures for conducting verifications.

Meanwhile, for acquiring citizenship according to the special cases, envisaged in article 9 of the law, the procedures of articles 17 and 18 do not apply. For these, the PM is authorized. The law does not envisage any principle, on the basis of which this procedure is conducted. This puts into question respect for the requirement of the relative legal reservation, according to the requirements of article 118, paragraph 2 of the Constitution.

In this context, the expression that the Constitution itself uses for regulating citizenship “by law” (according to articles 19/1 and 92/1 of the Constitution) and the criteria envisaged in article 118/2 of the Constitution, require that the law envisage the criteria and basic principles for acquiring this special manner of citizenship. The discretion given to the PM to issue by-laws that regulate the criteria for special cases of acquiring citizenship, the procedures for application, and the way of organizing and functioning of the Special State Agency (reporting to the Minister), contain elements that interfere with the exclusive competence of the Assembly and do not respect the requirements of article 118/2 of the Constitution.

a) ***CMD “On the creation, organization, and functioning of the Agency for Drafting Special Citizenship Programs”***

CMD no. 1008, dated 25.11.2020, “*On the creation, organization, and functioning of the Agency for Drafting Special Citizenship Programs,*” is published in the official gazette of December 17, 2020.⁷⁶ According to paragraph 1 of this CMD, the ADSCP is a public, legal, budgetary entity, reporting to the minister responsible for issues of citizenship and asylum, i.e., the minister covering internal affairs.

The ADSCP is headed by the general director, who organizes and leads its entire activity and reports to the Minister. The General Director of the ADSCP is appointed, relieved of duty, or dismissed by order of the Prime Minister, upon proposal by the responsible minister. The only criterion that the CMD envisages for the General Director is the 5-year experience in bodies of the state administration, while there are no special criteria about the security and cleanliness of this functionary that leads precisely the institution tasked by law for establishing the specific rules of special security controls and cleanliness of the figure of applicants seeking to acquire citizenship according to special cases (article 9, law no. 113/2020).

It is notable that the ADSCP, according to article 7 of this CMD, is tasked with a series of competences, which are not clear, overlap policymaking competences with controlling and decision-making ones, and surpass competences according to the authorization of law no. 113/2020, article 9, paragraph 2. A consequence of these deficiencies and lack of clarity is the formulation of article 9, paragraph 2 of the law (as addressed above) and the fact that the authorization for issuing by-laws does not respect the requirements of article 118/2 of the Constitution.

Concretely, the responsibilities of the ADSCP are formulated in the CMD in an evasive manner, without establishing the basic principles that will guide this institution in exercising them and, namely, regarding the preparation of technical criteria of special programs, specific rules of special control and cleanliness of the figure, etc.⁷⁷ This leaves broad discretion to the ADSCP in evaluating these technical and specific rules for special controls, creating potential premises for their application in a selective manner. For instance, if we talk about the legal criteria of security and cleanliness (envisaged in article 9/1 of the law on citizenship), the by-law does not envisage the concrete cases when they are infringed (such as detentions for criminal proceedings, convictions, related to certain criminal offenses that represent a threat to public order and national security). the lack of details in this by-law derives from the lack of clarity of the law itself, as this criterion is very evasive in paragraph 1 of article

⁷⁶ View of the document – Center for Official Publications (qbz.gov.al)

⁷⁷ See letters “a”, “b”, “c”, “d”, “dh”, “e”, “ë”.

9 of the new law on citizenship.

Letter “dh” of article 7, gives ADSCP some competences that are not envisaged in article 9, paragraph 2 of law no. 113/2020, which create overlapping with one another. Namely, the responsibility to review applications and the fulfillment of criteria for acquiring citizenship, verification of controls on the cleanliness of the figure and whether the criteria are met for special programs according to legislation in force, conveys the proposal for decision-making to the competent authorities. Concretely, according to article 9, paragraph 2, of law no. 113/2020, three are the main responsibilities of the ADSCP: drafting special programs, establishing the specific rules for the control of security and cleanliness of the figure at the highest standards, and monitoring their implementation. In other words, this institution does not have the competence to review applications. Meanwhile, the use of three different concepts in the contents of the CMD in question, with regard to the responsibilities of the ADSCP for monitoring, verification, and control of the cleanliness of the figure, contain confusing elements as to whether this will be the institution that will check the criteria linked with them or monitor other institutions that will realize this process. Article 9, paragraph 2 of the law, tasks it only with a monitoring function.

b) **CMD “On the establishment of criteria, procedures of application, rules for conducting the verification and necessary controls for acquiring Albanian citizenship for special contribution in the field of arts and culture”⁷⁸**

This CMD was approved about one year and a half after entry into force of law no. 113/2020 (on 11.03.2022), while according to article 24, paragraph 1 of this law, it should have been approved within 3 months since its entry into force. The establishment of this three-month deadline by the legislator, which has not been respected, represents an inferred legal requirement that the by-laws pursuant to article 9, paragraphs 2 and 3, should guarantee a complete framework of by-laws that enabled its unified implementation, in a clear and understandable manner, both by responsible institutions and interested individuals in acquiring special citizenship.

This CMD is dedicated only to the establishment of criteria, application procedures, and rules for conducting verifications and necessary controls, for acquiring Albanian citizenship, for persons who have a **special contribution in the field of arts and culture**.

The formulation of provisions of this CMD features generalizing or evasive elements that create lack of clarity and potential premises for granting citizenship in a selective manner. First, this is a result also of the lack of the basic principles or minimal criteria for evaluating the contribution in the fields of art and culture. A contribution of interest in the field of arts (according to the CMD) shall be the creative activity in any field of art, with a marked influence in the country of origin and in the Republic of Albania. A similar formulation in the CMD is also noticed for contribution in the field of culture, in any field of cultural disciplines. These contributions are proven by the applicant at the Ministry responsible for education and culture, which appears to have a broad discretion for evaluation.

The requirement for inclusion in the special Albanian citizenship program (for contributions in arts and culture) is presented to the ADSCP and a series of documents are attached, envisaged in article IV thereof. These documents include recommendations by the ministry responsible for arts and culture in the country of origin, a recommendation by a central institution of arts and culture of the country of origin, 2 recommendations by notable personalities of arts and culture of the country of origin and/or Albania, standing out in the genre or discipline that the individual operates in. The lack of basic criteria (in this by-law) for the evaluation of special contributions in these fields makes

⁷⁸ [Vendim-për-përcaktimin-e-kritereve-në-fushën-e-artit-e-të-kulturës.pdf \(mb.gov.al\)](#)

the recommendations issued according to this article to have a subjective character of evaluation.

Chapter V of this CMD envisages the process of verification and evaluation of requests for citizenship by the ADSCP. So, this body, aside from the authorization the law makes according to article 9/3, is tasked by a by-law other responsibilities in the procedure of application for citizenship, after it conducts preliminary verifications for the fulfillment of formal conditions and verifies whether the applicant meets the technical requirements, validity, and lawfulness of the presented documentation, conducts relevant verifications of the judicial status and the national security through SHISH and the General Directory of State Police, asks through official letters from the ministry responsible for arts and culture to evaluate the contribution of the petitioner in the field of arts and culture. The procedure pursued by this body further, to report to the Minister responsible for public order and security, the fulfillment or not of criteria, is concentrated only on the fact whether the Ministry responsible for arts and culture, deems whether the contribution of the applicant is not of interest in the field of arts and culture.

It is worth mentioning that among the criteria for application envisaged in Chapter II of this CMD, it is envisaged also that:

- a. the individual should not have been convicted by a final court decision in their own country, in the Republic of Albania, or any third country, for criminal offenses for which the Albanian law envisages convictions of no less than 3 (three) years of imprisonment.
- b. the individual does not appear registered as someone with criminal records, on the lists of international partner security organizations.

Meanwhile, another criterion mentioned (under letter “ç” of paragraph 1) is the one envisaged in article 9/1 of law no. 113/2020, that the person does not pose a threat to national security and public order of the RA. It is inferred that when an individual poses a threat to national security or public order, that is different from those cases linked to his/her conviction or not appearing as registered as a person with criminal records in the lists of international partner security organization. As mentioned in the other CMD that was analyzed above, the lack of details in this by-law of these cases derives from the lack of clarity of the law itself as this criterion is very evasive, in paragraph 1, article 9 of the new law on citizenship. This leaves broad room for evaluation and discretion to SHISH, thus creating premises for a non-uniform application of this criterion

c) **CMD “On the establishment of the criteria of application procedures, the rules of conducting necessary verifications and controls for acquiring Albanian citizenship for special contribution in the fields of education, science, and sports”**

This CMD was approved with considerable delay too, in April 2022, or one month after the approval of the CMD on the criteria and procedures related to applicants with contributions in the fields of arts and culture, and about one year and a half after the entry into force of the new law on citizenship no. 113/2020.

This CMD is devoted only to the establishment of criteria, application procedures, and the rules for conducting necessary verifications and controls, on acquiring Albanian citizenship, for individuals with **special contribution in the fields of education, science, and sports**.

The formulations of this CMD as well features the same problems, lack of clarity of criteria for the evaluation of contribution of interest in these three fields, competences given to the ADSCP vis-à-vis the provisions of law no. 113/2020, the subjective room for evaluation in recommendations given by the ministry/institutions responsible for education, sports, and science, the evasive and non-concrete formulation of all cases (or principles) as to when a citizen will be deemed as posing a threat to public

order and national security.

d) Lack of a by-law that concretizes the criteria and application procedures for citizenship toward individuals in which Albania has national or economic interests

While two years and a half have passed since the approval of the new law on citizenship, the CoM has not issued any by-law (in accordance with articles 9, paragraph 3, and article 24/1) for the application criteria and procedures, rules for conducting necessary verifications and controls for acquiring Albanian citizenship for special contributions, because of national or economic interests of our country.

It appears that CMD no. 530, dated 29.07.2022 “On the establishment of an additional sector that is given by concession/public private partnership,” was published in official gazette no. 111 (August 2020). It envisages the implementation of procedures for concession/public private partnership, in the sector of citizenship programs, tasking the Ministry of Interior for its implementation.⁷⁹

The ADSCP Director told BIRN Albania that this decision marks the start of the establishment of the program of citizenship for investment. He further stated that after this decision, a working group will be established at the Ministry of Interior to draft the program. Then, an international competition will be opened to select the winning company on the basis of expertise and experience it offers in this field.⁸⁰ Referring to this CMD and article 22 of law no. 125/2013, amended, “On concessions and public private partnership,” the start of procedures begins with the publication of the notification of the contract. Referring to the website of the Ministry of Interior, no announcement has been announced for companies that have the promotion of the Albanian passport in the world as their main focus.⁸¹ Based on searches on the website of the Ministry of Interior, there is only a publication of order 45 and 46 of 2022, with a one-month deadline, for a delegation of competences from the Minister of Interior to the Director of ADSCP, for signing and presenting the request, together with accompanying documentation for acquiring Albanian citizenship to the President of the Republic.

For public opinion, in spite of sporadic statements in the media, it remains entirely unclear why it was deemed necessary to determine as an additional sector the issuance by concession/public private partnership, in the sector of citizenship programs. There is no official document that sheds light on the need to approve this CMD and what direction the issuance by concession or public private partnership of this service is envisaged.

Meanwhile, the law on citizenship 113/2020, contains evasive and unclear procedural regulations that leave room for the executive power to determine and change, according to its subjective assessment, the bodies or subjects responsible for the application procedures, rules for conducting necessary verifications or controls on citizens seeking to benefit from citizenship, according to special cases envisaged in article 9 of law no. 113/2020.

So, even the approval of this CMD, about two years after the approval of the law, is a result of broad discretion given the PM to issue by-laws, without establishing the main principles that guide them, further enhancing the effect of legal uncertainty, especially vis-à-vis concerns that the EU has expressed about these schemes for countries that have Albania’s status, in the EU integration process.

⁷⁹ <https://qbz.gov.al/eli/fz/2022/111/49c6b75c-fe5c-40b4-be70-f33cef4b407c>

⁸⁰ <https://www.reporter.al/2022/08/16/projekti-i-qeverise-per-pasaportat-e-arta-ngre-shqetesime-te-sigurise/>

⁸¹ <https://mb.gov.al/category/njoftime-per-publikun/page/3/>

4. EC criticism for the investor citizenship scheme in Albania

By being a signatory party to the Schengen agreement, Albania enables individuals who are granted citizenship because of investment the right to enjoy freedom to move in the Schengen area, just as all of its other citizens. Also, as a candidate country for membership, for which the European Council decided to open negotiations in 2020, Albania will be a country with full rights and obligations, when it fulfills the recommendations and standards established by EU institutions, upon receipt of their consent and the consent of EU member states, as well as the consent of their citizens.⁸²

It is worth emphasizing that in July last year (2022), the first Inter-Governmental Conference for the accession negotiations with Albania was held, while the EC has begun the *screening*, otherwise known as the process of analytical control of EU's *acquis*, a process divided into 35 chapters, grouped under 6 groups of chapters or clusters.⁸³ This process enables Albania, as a candidate country, to familiarize with EU legislation and standards and the obligations deriving from them. Furthermore, the process allows the review of levels of readiness of Albania and plans to further align domestic legislation and to receive preliminary guidelines about issues being negotiated.⁸⁴ In September 2022, the process for the first group of six chapters began, 5 of which have to do with disputable areas that are potentially affected by the investor citizenship scheme, namely public procurement, statistics, Justice, Freedom, and Security, and Financial Auditing.

A very important principle in the membership of EU candidate countries is the cooperation with other member states, in areas such as security, foreign policy, and trade. The legal provision of a scheme that grants citizenship to investors, for candidate countries like Albania or in the region, while the EU rang the alarm bells since 2014 and escalated its positions, with concrete recommendations in 2022, does not positively serve the process of *screening* and puts at risk particularly the security of all other member countries.

The EC has criticized the inclusion of this way of acquiring citizenship since 2019, when the draft law on citizenship was still a draft being proposed. In a repeated manner, in its third and fourth Reports to the European Parliament and Council, “according to the visa suspension mechanism” the EC sent a letter to Albanian authorities since October 2019, seeking clarifications about this issue and warning Albanian authorities of the substantial risks and potential repercussions of introducing such a scheme.⁸⁵ The main concern raised by the EC has to do with the risk in the fields of security, money laundering, fiscal evasion, terrorism financing, and corruption or the infiltration of organized crime.⁸⁶

⁸² https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/conditions-membership_en

⁸³ https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/albania_en

⁸⁴ https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/glossary/screening-acquis_en

⁸⁵ Third visa suspension report

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0325>

⁸⁶ In August 2021, the EC again, in its Fourth Report on the Visa Suspension Mechanism, stresses that it is monitoring the impact of the new law on citizenship on the visa-free regime. From the standpoint of the Commission, the law offers the possibility to create a scheme for golden passports that may be used to circumvent due legal process for residence in the EU. The Commission issues a recommendation the contents of the approved golden passport scheme based on the new law on citizenship.

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0602>

Upon approval of the CMD, which opens the way to giving by concession or a public/private partnership of citizenship, through joint meetings and through the Fifth Report on the Visa Suspension Mechanism of December 2022, the EC asks the Albanian Government to invalidate the legal basis for the golden passport scheme and refrain from or avoid the granting of citizenship according to this scheme.⁸⁷ This position is consistent with the annual reports reflected in annual reports on Albania in 2020⁸⁸, 2021⁸⁹ and 2022.⁹⁰

In particular, in the fifth report on the visa suspension mechanism of December 2022, for five countries of the Western Balkans (including Albania), Georgia, Moldova, and Ukraine, the EC warns that if granting citizenship according to the investor citizenship scheme is deemed to pose an added risk for the internal security and public policies of member states, the visa-free regime with the EU may be suspended.⁹¹ This warning comes precisely in December 2022, or one month after the EU Council decision to fully suspend the implementation of the Agreement between the EU and the Republic of Vanuatu (a country in the Pacific Ocean, east of Australia) for the removal of short-term visas. In the arguments for this decision, the Council says that Vanuatu operates investor citizenship schemes, through which its citizenship is granted to citizens of other countries without any connection with the state of Vanuatu, issuing positive decisions on the overwhelming majority of applications. Until March 2021, the country gave over 10,500 passports, an incredibly low rate of refusal. This situation raises doubts regarding the credibility and security controls and proper care demonstrated by the authorities of the country in question.⁹² Earlier, the EC had expressed some concerns about this scheme in 2017–2021, in Vanuatu, regarding the low rate of refusal of applications, the issuance of citizenship for applicants featured in the Interpol database, etc.⁹³

Considering visa liberalization one of the greatest achievements of Albania and the countries of the region in the context of the European integration process, their suspension might have also economic consequences as it might discourage foreign investment and trade between Albania and the Schengen countries. This might affect the Albanian economy and potentially slow down the country's progress toward EU integration.

⁸⁷ Fifth Report on the Visa Suspension Mechanism, December 2022

[https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0715R\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0715R(01)), see p. 7-8

⁸⁸ Report on Albania 2020, accompanying the Communication from the Commission to the European Parliament, Council, the European Economic and Social Committee, and the Committee of Regions, Communication of 2020 on the EU enlargement policy

https://integrimi-ne-be.puneteshajshme.gov.al/wp-content/uploads/2021/03/Raporti-KE_2020_DBE_8.03.2021_final.pdf

⁸⁹ Albania's report 2021, accompanying the document of Communication from the Commission to the European Parliament, Council, the European Economic and Social Committee, and the Committee of Regions, Communication of 2021 on the EU enlargement policy

<https://neighbourhood-enlargement.ec.europa.eu/system/files/2021-10/Albania-Report-2021.pdf>

⁹⁰ Albania's report 2022, accompanying the document of Communication from the Commission to the European Parliament, Council, the European Economic and Social Committee, and the Committee of Regions, Communication of 2022 on the EU enlargement policy

<https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Albania%20Report%202022.pdf>

⁹¹ Fifth Report on the Visa Suspension Mechanism, December 2022, p. 44

⁹² *Ibid.*, see p. 3.

⁹³ *Ibid.*, see p. 4.

5. Risks of the investment citizenship scheme in the context of Albania

The main concern raised by the EC regarding the legislation and granting of citizenship to investors, with regard to Albania and other countries in the region of the Western Balkans, has to do in particular with risks in the field of security, money laundering, fiscal evasion, terrorism financing, and corruption or infiltration of organized crime.

5.1 Risks in terms of transparency

The main problem with the application of these investor citizenship schemes has to do with the lack of transparency in all of its phases, which creates premises for the appearance of related risks regarding corruption, organized crime, money laundering, etc. From the countries applying these schemes, the EC and EP have noticed deficiencies in reporting of results and impact of golden passport programs, including information on the number of individuals who have been granted citizenship and their country of origin. This may make it difficult to evaluate the effectiveness of these schemes and identify any potential risk or problem.

In Albania, there is a lack of official data or information as to how many citizens have benefited from the investor citizenship (or other special cases for contributions in the fields of arts, sports, culture, education), according to the previous law on citizenship and new legislation, which about two and a half years after its approval, has not yet envisaged any detailed regulation by by-laws for citizenship for economic interests.

The ADSCP, though an institution with many competences (envisaged in the law on citizenship and the by-laws) in terms of drafting special citizenship programs, drafting technical criteria, receiving applications, and their preliminary verification, monitoring the process of controlling security and integrity, does not have an official internet website or any dedicated section on its activity to date, on the official website of its supervising institution, the Ministry covering internal affairs. It is worth emphasizing that the Director of this institution, according to CMD no. 1008, dated 25.11.2020, presents to the minister responsible for issues of citizenship and asylum, the annual report on the activity of the ADSCP, and periodical reports. These reports do not appear published on the official website of the Ministry of Interior. Furthermore, data is lacking from the Ministry of Interior itself with regard to proposals sent to the President of the Republic for granting citizenship, and what legal provision these are based upon (i.e., whether there are special cases of proposing citizenship, including those linked with economic interests).

Meanwhile, the website of the President of the RA, the constitutional institution that enjoys the attributes of granting citizenship or allowing the relinquishing of Albanian citizenship, does not show any decree published since 2020 on granting citizenship (the year when the new law on citizenship entered into force). The decrees for granting citizenship on the official website of the President appear those published since 2019 and earlier. This overview highlights a contradiction with data published by media, according to which, sure sources at the presidency highlight that the number of granting citizenship during 2021 increased, almost double compared to the previous year (2020).⁹⁴

⁹⁴ <https://ina.media/?p=6217>

5.2 Risks related to security, corruption, and organized crime

Golden passports present potential risks for a country's national security, the encouragement or penetration of corruption and organized crime, thus affecting the security of the EU itself. The main concern raised for such programs is that certain individuals may not have undergone the same level of review and control of security and integrity, as those going through traditional or classical processes for citizenship applications. The EC has criticized EU member countries that use poor filters for verification and control of security and integrity, advantaging their approach to attract more investors, which potentially threatens the country's security.⁹⁵

The lack of controls in the internal Schengen border area makes these schemes particularly dangerous also for the EU, referring overall to the discretion that countries have for granting citizenship.⁹⁶ The issuance of passports without conducting the necessary controls allows individuals and subjects with dubious ties with organized crime or potential corruption, to use their citizenship to travel in the EU. As analyzed earlier in this report, our legislation does not envisage clear, predictable, and standardized criteria for checking the security and integrity of applicants.

Albania's granting golden passports to citizens who make various forms of investment in the country and who have ties with criminal activities or organizations (but may not be convicted or prosecuted in their countries of origin or other countries of the world), creates serious premises for risks that the EU has warned of continuously for member states and candidate countries in the accession process, in terms of security.

In the latest report on Albania, that of 2022, the EC stresses that Albania has a good level of preparation in the field of foreign policy, security, and defense. Good progress was achieved as the country continued to achieve results in fully aligning with the common foreign policy and security of the EU, including EU restrictive measures following Russia's unprovoked aggression against Ukraine. Nevertheless, the following year, Albania is recommended to preserve full harmonization with the foreign, security, and defense policies of the EU.⁹⁷

For officials involved in application procedures according to our legislation, who because of problems that our country faces in terms of corruption, there is a risk (potential) to be corrupted by individuals and their mediators, to be favored through this scheme of citizenship. In this regard, it is worth underscoring the internal challenges that the country has in terms of the fight against corruption, analyzed also in the latest EC report on Albania for 2022. In spite of results in the investigation, prosecution, and conviction of corruption, the EC recommends that efforts should continue and greater political will is required, further structured efforts, and adequate resources and capacities. Overall, corruption is a field where concern is serious. The increase in the number of criminal convictions against high-level officials remains an important priority for putting an end to the culture of impunity.⁹⁸ The U.S. State Department Report on Human Rights Practices in Albania for 2022 underscores systemic corruption in government, law enforcement agencies, and Municipalities.⁹⁹

⁹⁵ A Malaysian financier called Jho Low, wanted regarding one of the greatest frauds in history, tried to buy a "golden passport" from Cyprus, which would grant him unrestricted access to the EU, according to a report. <https://www.theguardian.com/world/2021/feb/03/malaysian-fugitive-jho-low-tried-to-buy-golden-passport-to-eu-report-says>

⁹⁶ EC Report 2019 "Schemes for acquiring citizenship and residence in the European Union" https://commission.europa.eu/system/files/2019-01/com_2019_12_final_report.pdf

⁹⁷ <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Albania%20Report%202022.pdf>, p. 54

⁹⁸ Ibid., p.4-5.

⁹⁹ https://www.state.gov/wp-content/uploads/2023/02/415610_ALBANIA-2022-HUMAN-RIGHTS-REPORT.pdf

The use of golden passports has also been identified as a potential risk for corruption by the international organization *Transparency International*.¹⁰⁰

The legal framework needs to be very well established in order to avoid such issues. In the Albanian legal context, expanding the competences of the ADSCP beyond the spirit and the provisions of the law, the evasiveness of the law in terms of the lack of minimal criteria for conducting the procedure of control and verification of responsible authorities, and the approval of the CMD that opens the way to starting procedures for the concession or public/private partnership for citizenship programs, further increases the room for influences of a corrupt nature or those linked with organized crime in the application of procedures for granting citizenship in special cases (including cases of investor citizenship). Furthermore, the CMD for the creation and functioning of the ADSCP does not envisage criteria for the control of integrity of the head and employees of this institution.

5.3 Risks regarding money laundering and terrorism financing

The issuance of golden passports for citizens with dubious ties with organized crime or terrorism, or when they make investments with proceeds from dubious sources, creates premises for risks of money laundering and terrorism financing through the investments made in exchange for citizenship.

The scheme for acquiring citizenship through investment may help applicants move money beyond borders and make it difficult to identify their source. Some countries may have poor legislation and financial oversight, which favors money laundering and terrorism financing. Individuals with ties with terrorist organizations may potentially use citizenship to bring money through the borders to Albania and support terrorist activity or use dirty money (dubious funds) to fund citizenship (funds that may come from drug trafficking, arms smuggling, or money laundering). The acquisition of citizenship by such individuals may represent a risk for national security and the security of the EU. Poor oversight mechanisms on the investor citizenship scheme may make it easier for individuals involved in terrorist activity to go unnoticed and abuse the benefits of citizenship.

EU's concerns about the risks presented by investor citizenship schemes in terms of preventing money laundering terrorism financing in the country, are enhanced if we analyze separately the concerns in the context of the country's EU integration process, regarding money laundering, terrorism financing, and the need to strengthen institutional capacities and conduct financial investigations, in parallel with criminal ones, highlighted also in the latest EC report on Albania, for 2022.¹⁰¹ According to this report, the country advanced in a sustainable manner in the implementation of the Action Plan of the Financial Action Task Force (FATF),¹⁰² to improve effectiveness in fighting money laundering, but Albania remains in the list of jurisdictions under increased monitoring. Financial investigations should accompany systematically criminal proceedings. Judicial police officers need further training to investigate, especially on financial crimes and money laundering. The EC notes that the approval of legislation that opens the way to fiscal and criminal amnesty against EU and

¹⁰⁰ <https://www.transparency.org/en/campaigns/ending-corrupt-abuse-european-union-golden-passports-visas>

¹⁰¹ Shih ndër të tjerash faqet 38, 40, 47 të Raportit, të publikuar në këtë link: <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Albania%20Report%202022.pdf>

¹⁰² FATF is the global watchdog of money laundering and terrorism financing. This intergovernmental body establishes international standards that seek to prevent these unlawful activities and the harm they cause society. This inter-governmental body establishes international standards to ensure that national authorities can effectively follow unlawful funds linked with drug trafficking, unlawful weapons trade, cyber fraud, and other serious crimes. In total, more than 200 countries and jurisdictions have pledged to implement FATF standards as part of a coordinated global reaction for the prevention of organized crime, corruption, and terrorism.

Moneyval recommendations risks progress in this field, and in the fight against money laundering. The EC recommends fast progress in concluding the delayed plan, agreed with FATF on the prevention of money laundering and terrorism financing, in order to remove Albania from the list of FATF jurisdictions under increased monitoring. Albania should continue to investigate the ties between organized crime and terrorism.

5.4 Risks in terms of fiscal evasion

The use of golden passports has been identified as a potential risk for fiscal evasion by the Organization for Economic Cooperation and Development (OECD). Some countries that offer golden passports have been asked to improve tax transparency and the practices of information exchange, to reduce the risk of fiscal evasion and other unlawful activities.¹⁰³

The use of these schemes may enable citizens to benefit from the existence of privileged tax rules and make it difficult for financial institutions of the relevant country to identify the place where the income tax of the funds being invested was held. These passports enable individuals to move their assets and funds abroad, making it difficult for tax authorities to track their transactions and the application of tax laws. Although it is not illegal to benefit from lower tax rates in another country, some individuals may use golden passports to evade taxes, hiding their assets.

The latest EC report underscores that Albania is moderately prepared in the field of taxes. There has been limited progress in terms of the implementation of recommendations of the previous year with regard to the reduction of the stock of unpaid VAT reimbursements, the approval of a new calendar on the excise tax on tobacco and the consultation of the draft on the mid-term strategy that incorporates proposals for addressing tax expenses.

The approval of the fiscal and criminal amnesty against EU and *Moneyval* recommendations may jeopardize progress in this field. In the coming year, Albania should implement measures to reduce tax expenses, especially due to exemptions, simplify the tax system to encourage higher compatibility in the tax field, and ensure the necessary capacities and take measures to ensure the effectiveness of the automatic tax information exchange with EU member states, in keeping with OECD global standards.¹⁰⁴

¹⁰³ <https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/residence-citizenship-by-investment/>

¹⁰⁴ See p.87 of the report, published at this link:
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